

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ONEIDA

DENISE FOELL,

X

Plaintiff,

Index No.
Date Purchased:

-against-

ST. JOHN'S LUTHERAN CHURCH-MISSOURI SYNOD,
EASTERN DISTRICT OF THE LUTHERAN CHURCH-
MISSOURI SYNOD a/k/a THE LUTHERAN CHURCH-
MISSOURI SYNOD EASTERN DISTRICT,
LUTHERAN CHURCH-MISSOURI SYNOD,
JOHN DOE and JANE DOE, RICHARD
ROE and JANE ROE, pastors, clergy and administrators
whose names are unknown to the Plaintiff,

Plaintiff designates
ONEIDA
County as the place of trial.

The basis of the venue is
Defendant's place of
business.

SUMMONS

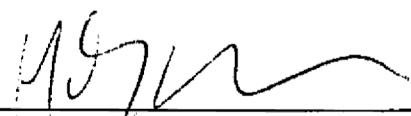
Defendants.

X

To the above named Defendant(s)

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
November 13, 2019


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SWEENEY, REICH & BOLZ, LLP
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ONEIDA

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DENISE FOELL,

Plaintiff,

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-against-

ST. JOHN'S LUTHERAN CHURCH-MISSOURI SYNOD,
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MISSOURI SYNOD a/k/a THE LUTHERAN CHURCH-
MISSOURI SYNOD EASTERN DISTRICT,
LUTHERAN CHURCH-MISSOURI SYNOD,
JOHN DOE and JANE DOE, RICHARD
ROE and JANE ROE, pastors, clergy and administrators
whose names are unknown to the Plaintiff,

VERIFIED COMPLAINT

Defendants.

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Plaintiff, DENISE FOELL, by her attorney, MICHAEL G. DOWD, complaining of
Defendants, hereby alleges the following:

JURISDICTION AND VENUE

1. This action is timely commenced pursuant to the New York State Child Victims Act, dated February 14, 2019, and CPLR § 214-g.
2. This Court has jurisdiction pursuant to CPLR § 301 as Defendants' principal place of business is in New York and because much of the unlawful conduct complained of herein occurred in New York.
3. Venue is proper pursuant to CPLR § 503 because many of the events giving rise to this action occurred in Oneida County.

AS AND FOR A FIRST CAUSE OF ACTION:

NEGLIGENCE SUPERVISION

4. The Plaintiff, DENISE FOELL (hereinafter "PLAINTIFF") was born on January 14, 1955. She is a resident of Yonkers, New York.
5. PLAINTIFF was a member of Defendant ST. JOHN'S LUTHERAN CHURCH – MISSOURI SYNOD (hereinafter "CONGREGATION"), which is a congregation within Defendant EASTERN DISTRICT OF THE LUTHERAN CHURCH – MISSOURI SYNOD a/k/a THE LUTHERAN CHURCH – MISSOURI SYNOD EASTERN DISTRICT. CONGREGATION is located in Rome, New York which is in Oneida County.
6. PLAINTIFF was confirmed, attended mass, and received her sacraments through the Lutheran Church – Missouri Synod.
7. Upon information and belief, at all times mentioned herein, Defendant EASTERN DISTRICT OF THE LUTHERAN CHURCH – MISSOURI SYNOD a/k/a THE LUTHERAN CHURCH – MISSOURI SYNOD EASTERN DISTRICT (hereinafter "DISTRICT") was and is a not-for-profit religious corporation organized and existing around and under by virtue of the laws of the State of New York. Its principal headquarters are located in Williamsville, New York, which is in Erie County.
8. Upon information and belief, at all times mentioned herein, Defendant LUTHERAN CHURCH – MISSOURI SYNOD (hereinafter "LUTHERAN CHURCH") was and is a not-for-profit religious corporation organized and existing around and under by virtue of the laws of the State of New York. Its

principle headquarters are located in St. Louis, Missouri.

9. Upon information and belief, DISTRICT is the LUTHERAN CHURCH itself. DISTRICT performs the functions of the LUTHERAN CHURCH and is bound by their resolutions.
10. Upon information and belief, Defendant CONGREGATION is a Lutheran Church – Missouri Synod congregation within the DISTRICT and is a member of LUTHERAN CHURCH.
11. Upon information and belief, District President Reverend Doctor Chris Wicher (hereinafter “PRESIDENT”) is currently the District President of the DISTRICT.
12. Upon information and belief, the District President is the Chief Executive Officer of all congregations in the DISTRICT and as part of said responsibilities installed and assigned the clergy and pastors to work in the congregations within DISTRICT.
13. Upon information and belief, all of PRESIDENT’s predecessor(s) were the Chief Executive Officer of all congregations in the DISTRICT and as part of said responsibilities granted approval for clergy and pastors to work in the congregations, including REVEREND PAUL BORIACK (hereinafter “BORIACK”). This includes those District Presidents who approved BORIACK for his pastoral positions within DISTRICT.
14. Upon information and belief, at all times mentioned herein, PRESIDENT and the above-referenced predecessor Presidents of Defendant DISTRICT along with Defendant DISTRICT created the policies and procedures to be followed by ministers, pastors and clergymen within the DISTRICT. The Presidents of

DISTRICT and Defendant DISTRICT were responsible for investigating complaints against ministers, pastors, and clergy within DISTRICT.

15. Upon information and belief, the President of DISTRICT, either directly, through District officials and/or The Central New York North Circuit, and LUTHERAN CHURCH established policies and procedures by which complaints of sexual abuse against DISTRICT clergy, pastors, and staff were to be dealt with and investigated by the DISTRICT.
16. Upon information and belief, at all times mentioned herein, the President of DISTRICT was also responsible for removing and/or suspending district ministers, clergy and pastors from their duties.
17. Upon information and belief, at all times mentioned herein, BORIACK was the pastor of Defendant CONGREGATION having been assigned and otherwise authorized to work there by the Presidents of DISTRICT, DISTRICT, CONGREGATION, and LUTHERAN CHURCH.
18. Sometime after PLAINTIFF became a member of CONGREGATION when she was in Kindergarten, BORIACK began a pattern of grooming PLAINTIFF for the purpose of sexually abusing her. This grooming included but was not limited to telling PLAINTIFF that she was special, giving PLAINTIFF a solo in the church choir, telling PLAINTIFF that she energized him, complimenting PLAINTIFF'S appearance and giving her special attention and praise.
19. PLAINTIFF was sexually abused by BORIACK on about a weekly basis from approximately 1965 through about 1973. The abuse typically occurred after PLAINTIFF attended confirmation classes, played piano or sang in the choir at

CONGREGATION. Soon after these events were concluded, BORIACK, using the power and authority invested in him by DEFENDANTS, required PLAINTIFF to remain with him on DEFENDANT'S property and then proceeded to sexually abuse her. The sexual abuse included BORIACK forcibly kissing PLAINTIFF; BORIACK then would unbutton PLAINTIFF'S shirt and removed her bra. BORIACK used his position of authority as pastor of CONGREGATION to forcibly bite PLAINTIFF'S breasts repeatedly and thereby inflicting excruciating physical pain upon PLAINTIFF.

20. The sexual abuse took place in the front entrance and sanctuary of CONGREGATION.
21. Upon information and belief, PLAINTIFF was taught and otherwise informed by Defendants CONGREGATION, DISTRICT and LUTHERAN CHURCH, by word and deed that she should obey, trust, and respect the DISTRICT, CONGREGATION, LUTHERAN CHURCH and BORIACK.
22. Upon information and belief, Defendants CONGREGATION, DIOCESE and LUTHERAN CHURCH knew the risk of sexual abuse of minor members by pastors, clergy and other staff working in the DISTRICT.
23. Upon information and belief, at all times mentioned herein, Defendants CONGREGATION, DIOCESE and LUTHERAN CHURCH knew that minors sexually abused in the Lutheran Church – Missouri Synod would suffer psychological and emotional injuries, as well as other damages.

24. Upon information and belief, at all times mentioned herein, Defendant DISTRICT aided and abetted the concealment of criminal conduct by failing and refusing to report allegations of child sexual abuse to appropriate New York civil authorities.
25. Upon information and belief, at the time of the acts alleged herein, BORIACK was an employee of, and acting as an agent of Defendants CONGREGATION, DISTRICT and LUTHERAN CHURCH.
26. Upon information and belief, Defendants CONGREGATION, DISTRICT and LUTHERAN CHURCH had a duty to protect PLAINTIFF as a minor member from BORIACK's criminal sexual acts.
27. Upon information and belief, Defendants CONGREGATION, DISTRICT and LUTHERAN CHURCH failed to adequately and completely supervise BORIACK and as a result of this failure and negligence, proximately caused PLAINTIFF to be sexually abused by BORIACK.
28. The aforementioned occurrences of sexual abuse were caused by the negligence, carelessness, recklessness, and the willful, wanton, reckless and grossly negligent conduct of Defendants CONGREGATION, DISTRICT and LUTHERAN CHURCH and their agents, servants, and/or employees, in failing to properly and adequately supervise the conduct of BORIACK as it related to PLAINTIFF.
29. By reason of the foregoing, PLAINTIFF sustained physical and psychological injuries, including but not limited to, severe emotional distress, confusion, humiliation, fright, anxiety, a severe shock to her nervous system, and has been caused to suffer physical pain and mental anguish, emotional and psychological damages as a result thereof, and, upon information and belief, some or all of these

injuries are of a permanent and lasting nature; and that PLAINTIFF as a result has become and will continue to be obligated to expend sums of money for medical expenses for treatment of said maladies.

30. That by reason of the foregoing, Defendants CONGREGATION, DISTRICT and LUTHERAN CHURCH are also liable to PLAINTIFF for punitive and exemplary damages.
31. It is hereby alleged pursuant to CPLR 1603 that the foregoing cause of action is exempt from the operation of CPLR 1601 by reason of one or more of the exemptions provided in CPLR 1602, including but not limited to, CPLR 1602(7) and 1602(11).
32. That the amount of damages sought exceeds the jurisdictional limits of all lower courts, which would otherwise have jurisdiction.

AS AND FOR A SECOND CAUSE OF ACTION:

NEGLIGENT FAILURE TO WARN

33. PLAINTIFF repeats, reiterates, and realleges each and every allegation contained in the above paragraphs of this Complaint, with the same force and effect as if fully set forth at length herein.
34. Upon information and belief, prior to and at all times herein mentioned, Defendants CONGREGATION, DISTRICT and LUTHERAN CHURCH and their agents, servants, and employees, knew or should have known that BORIACK violated CONGREGATION, DISTRICT and LUTHERAN CHURCH'S relevant rules, regulations and protocols prohibiting pastors like BORIACK from sexually abusing and otherwise harming minor members,

including PLAINTIFF.

35. The Defendants CONGREGATION, DISTRICT and LUTHERAN CHURCH and their agents, servants, and employees were negligent, careless and reckless and acted willfully, wantonly and were grossly negligent in failing to warn PLAINTIFF that the failure of BORIACK to abide by CONGREGATION, DISTRICT and LUTHERAN CHURCH's rules, regulations and protocols regarding prohibitions on employees being alone with minor parishioners put PLAINTIFF at risk for being sexually abused by BORIACK.
36. By reason of the foregoing, PLAINTIFF sustained physical and psychological injuries, including but not limited to, severe emotional distress, confusion, humiliation, fright, anxiety, a severe shock to her nervous system, and has been caused to suffer physical pain and mental anguish, emotional and psychological damages as a result thereof, and, upon information and belief, some or all of these injuries are of a permanent and lasting nature; and that PLAINTIFF as a result has become and will continue to be obligated to expend sums of money for medical expenses for treatment of said maladies.
37. That by reason of the foregoing, Defendants CONGREGATION, DISTRICT and LUTHERAN CHURCH are also liable to PLAINTIFF for punitive and exemplary damages.
38. It is hereby alleged pursuant to CPLR 1603 that the foregoing cause of action is exempt from the operation of CPLR 1601 by reason of one or more of the exemptions provided in CPLR 1602, including but not limited to, CPLR 1602(7) and 1602(11).

39. That the amount of damages sought exceeds the jurisdictional limits of all lower courts, which would otherwise have jurisdiction.

AS AND FOR A THIRD CAUSE OF ACTION:

NEGLIGENT FAILURE TO PROVIDE A SAFE AND SECURE ENVIRONMENT

40. PLAINTIFF repeats, reiterates, and realleges each and every allegation contained in the above paragraphs of this Complaint, with the same force and effect as if fully set forth at length herein.
41. The Defendants CONGREGATION, DISTRICT and LUTHERAN CHURCH assumed a duty to protect the safety and welfare of PLAINTIFF as more fully set forth above, when PLAINTIFF participated as a member in CONGREGATION related activities such as singing in the choir, playing the piano and participating in Youth Group. This duty imposed upon said Defendants, the duty to provide a reasonably safe and secure environment for PLAINTIFF while she was participating in CONGREGATION programs.
42. When PLAINTIFF was in said Defendants' care, said Defendants failed to exercise the degree of care that a reasonably prudent parent would have exercised under similar circumstances.
43. Defendants CONGREGATION, DISTRICT and LUTHERAN CHURCH and their agents and employees were negligent, careless and reckless and acted willfully, wantonly and were grossly negligent in failing to provide a safe and secure environment for PLAINTIFF while she participated as a minor in parish programs and as such were sexually abused by BORIACK.

44. By reason of the foregoing, PLAINTIFF sustained physical and psychological injuries, including but not limited to, severe emotional distress, confusion, humiliation, fright, anxiety, a severe shock to her nervous system, and has been caused to suffer physical pain and mental anguish, emotional and psychological damages as a result thereof, and, upon information and belief, some or all of these injuries are of a permanent and lasting nature; and that PLAINTIFF as a result has become and will continue to be obligated to expend sums of money for medical expenses for treatment of said maladies.
45. That by reason of the foregoing, Defendants CONGREGATION, DISTRICT and LUTHERAN CHURCH are also liable to PLAINTIFF for punitive and exemplary damages.
46. It is hereby alleged pursuant to CPLR 1603 that the foregoing cause of action is exempt from the operation of CPLR 1601 by reason of one or more of the exemptions provided in CPLR 1602, including but not limited to, CPLR 1602(7) and 1602(11).
47. That the amount of damages sought exceeds the jurisdictional limits of all lower courts, which would otherwise have jurisdiction.

WHEREFORE, the Plaintiff demands judgment against the Defendants, together with compensatory and punitive damages, and the interest, costs and disbursements pursuant to the causes of action herein.

Dated: New York, New York
November 13, 2019



MICHAEL G. DOWD
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Attorneys for Plaintiff

VERIFICATION BY ATTORNEY

MICHAEL G. DOWD, an attorney being duly admitted before the courts of the State of New York, hereby affirms the following under penalties of perjury:

That he is an attorney for the Plaintiff in the above-entitled action with offices located at 600 Third Ave, New York, New York; that he has read the foregoing VERIFIED COMPLAINT and knows the contents thereof; that the same is true to his knowledge, except as to the matters stated to be alleged upon information and belief, and that as to those matters he believes them to be true.

That the reason why this verification is made by deponent instead of Plaintiff is because Plaintiff is not within the County of New York where deponent has his office. Deponent further says that the grounds of his belief as to all matters in the VERIFIED COMPLAINT not stated to be upon his knowledge are based upon conversations with the Plaintiff and other writings relevant to this action.

Dated: New York, New York
November 13, 2019



MICHAEL G. DOWD
Attorney for Plaintiff
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New York, NY 10016
(212) 751-1640